

RESOLUTION ADOPTING ENCROACHMENT POLICY

WHEREAS, the West Harris County Regional Water Authority (the "Authority") is a regional water authority created pursuant to House Bill 1842, Act of the 77th Legislature, Regular Session, 2001, as amended, (the "Act") and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, in furtherance of the Authority's statutory authority and obligations, the Authority has acquired and/or owns properties, rights-of-way, easements, consents to encroachment, site access agreements, rights of entry, and other property interests (collectively and individually, "Property Interests"); and

WHEREAS, the Act provides that the Board of Directors of the Authority (the "Board") may set reasonable civil penalties for the breach of any rule or order of the Authority in an amount not to exceed \$5,000 for each violation or each day of a continuing violation; and

WHEREAS, the Board deems it necessary and appropriate to adopt the encroachment policy attached hereto (the "Encroachment Policy") and the rules included therein to enable the Authority to utilize, protect, and enforce the Authority's Property Interests; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF WEST HARRIS COUNTY REGIONAL WATER AUTHORITY THAT:

Section 1: The facts recited above are hereby declared to be true and correct.

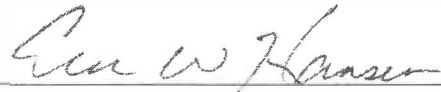
Section 2: The Board hereby adopts, and considers appropriate and reasonable, the Encroachment Policy. Any person violating the Encroachment Policy may be subject to civil penalties of up to \$5,000 per violation or each day of a continuing violation, as provided for by the Act.

Section 3: The Authority may, at its discretion, amend or rescind the Encroachment Policy and/or this Resolution at any time.

[EXECUTION PAGE FOLLOWS]

PASSED, APPROVED, and EFFECTIVE on April 12, 2023.

WEST HARRIS COUNTY REGIONAL
WATER AUTHORITY



President, Board of Directors

ATTEST:



Secretary, Board of Directors

(SEAL)



**WEST HARRIS COUNTY REGIONAL WATER AUTHORITY
ENCROACHMENT POLICY**

**ARTICLE I
PURPOSE, APPLICABILITY, RULES AND ORDERS**

Section 1.01. Purpose. This Encroachment Policy sets forth rules and requirements that are intended to establish a uniform approach for the Authority to address potential and/or actual encroachments onto the Property Interests that the Authority owns or has acquired in order to utilize, protect, and enforce the Authority's Property Interests.

Section 1.02. Applicability. All Encroachments shall be subject to the rules, requirements, policies, and procedures set forth in or authorized by this Encroachment Policy. The Board may amend or rescind this Encroachment Policy from time to time in its sole discretion. This Encroachment Policy shall not be construed to prevent the Board from implementing modifications to this Encroachment Policy and is not intended to confer any rights on Persons that encroach upon the Authority's Property Interests.

Section 1.02. Authority Rules and Orders. All requirements set forth in or authorized by this Encroachment Policy are adopted as rules of the Authority. All requirements and rules set forth in any part of this Encroachment Policy shall be considered orders of the Authority.

**ARTICLE II
DEFINITIONS**

Section 2.01. Definitions. As used herein, the capitalized terms shall the meanings set forth below:

- a. "Act" means House Bill 1842 of the 77th Texas Legislature, as amended.
- b. "Approval Document" is defined in Section 3.05 below.
- c. "Attorneys" shall mean the Authority's attorneys, either its general counsel (currently Allen Boone Humphries Robinson LLP) or any special counsel that has been directed by the Authority to provide legal services on a specific matter.
- d. "Authority" means the West Harris County Regional Water Authority.
- e. "Authority Comments" is defined in Section 3.04(b) below.
- f. "Board" means the Board of Directors of the Authority.
- g. "Director" means a person elected or appointed to service on the Board.

- h. "District" means any district created pursuant to Article III, Section 52(b)(1), (2) or Article XVI, Section 59 of the Texas Constitution, regardless of the manner of creation other than a navigation district or a district governed by Chapter 36 of the Texas Water Code.
- i. "Encroachment(s)" means any and all Facilities owned by a Person other than the Authority that encroach onto or cross any part of the Authority's Property Interests, including such encroachments or crossings that are contemplated as well as such encroachments or crossings that exist. The term Encroachment(s) in this Encroachment Policy does not include any existing encroachment or crossing affecting a Property Interest where: (i) the Authority has determined in its sole discretion such encroachment or crossing existed before the Authority acquired the Property Interest; and (ii) there have been no changes to such encroachment or crossing since the Authority acquired the Property Interest. Examples of types of Encroachments can be found in the Encroachment Policy Guidelines (defined below).
- j. "Encroachment Application Form(s)" means any form drafted by the Program Manager that the Requestor must submit for the Authority to consider a Request.
- k. "Encroachment Policy Guidelines" means the documentation specifying the rules, requirements, policies, and procedures regarding the Authority's Encroachment Policy, which may be amended from time to time and may be drafted by either the Program Manager pursuant to Section 3.01 below or by the Authority.
- l. "Encroachment Review Committee" means the members of the Board duly appointed to the Encroachment Review Committee from time to time in accordance with the applicable amended Resolution Establishing Committees, which resolution may be amended from time to time.
- m. "Facility(ies)" means any facilities (including without limitation paving, Utilities, fill, landscaping, fencing, and/or other improvements) of any type.
- n. "Person" means any individual, corporation, organization, government or governmental subdivision or agency, District, municipality, county, political subdivision, business trust, trust, estate, partnership, association, or any other legal entity.
- o. "Program Manager" shall mean the entity designated by the Authority to serve as the Authority's program manager (currently DE Corp.) and shall include its authorized representative(s).

- p. "Property Interest" or "Property Interests" means any or all properties, rights-of-way, easements, consents to encroachment, site access agreements, rights of entry, and other property interests the Authority owns or has acquired.
- q. "Relocation Agreement" is defined in Section 3.07 below.
- r. "Relocation Costs" is defined in Section 3.07 below.
- s. "Request" is defined in Section 3.01 below.
- t. "Request Document(s)" is defined in Section 3.03 below.
- u. "Requestor" means the Person submitting a Request to the Authority seeking approval of a contemplated or existing Encroachment by the Person and/or seeking the relocation of Authority Facilities to avoid and/or minimize a contemplated or existing Encroachment by the Person.
- v. "Utilities" means any lines, improvements, or other facilities (including without limitation any related appurtenances) for providing electricity, gas, communication, water, or sewage services to any Person(s).

Section 2.02. Interpretations. The article and section headings of this Encroachment Policy are included herein for convenience of reference purposes only and shall not constitute a part of this Encroachment Policy or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa.

Section 2.03. References, Etc. Any reference in this Encroachment Policy to a document shall mean such document and all exhibits thereto as amended or supplemented from time to time.

ARTICLE III ENCROACHMENT REVIEW PROCEDURES

Section 3.01. Encroachment Review Procedures. The Program Manager is hereby authorized by the Board to: (i) determine such additional rules, requirements, policies, and procedures that may be necessary or appropriate to implement the rules, requirements, policies, and procedures set forth in this Encroachment Policy; and (ii) draft an Encroachment Policy Guidelines as well as any Encroachment Application Forms that are required for the Authority's consideration of a request for the approval of a contemplated or existing Encroachment and/or the relocation of Authority Facilities to avoid and/or minimize a contemplated or existing Encroachment (a "Request"). The rules, requirements, policies, and procedures of the Encroachment Policy Guidelines are authorized by this Encroachment Policy and deemed to be rules, requirements, policies, and procedures of this Encroachment Policy. The Program Manager shall make the

Encroachment Policy Guidelines as well as any Encroachment Application Forms available to any Person on the Authority's website at www.whcrwa.com.

Section 3.02. Encroachment Approval Required. If an Encroachment is contemplated or if an Encroachment that already exists has not been approved by the Authority in writing, the Requestor shall submit a Request for the Authority's approval to the Program Manager in accordance with this Encroachment Policy. The Authority is not obligated to approve a Request and may deny any such Request in its sole discretion. All Encroachments, whether contemplated or existing, must be approved by the Authority in writing by an Approval Document before any work activity by or on behalf of the Requestor occurs on the Authority's Property Interests and before any Encroachment exists. Any Person that fails to obtain the Authority's approval of its Encroachment in accordance with this Encroachment Policy shall be subject to the provisions of Article V of this Encroachment Policy. Further, and without limitation, the Authority reserves its rights to halt construction of and/or to remove any Encroachment that has not been approved by the Authority in writing.

Section 3.03. Submission of Encroachment Review Request.

- a. A Request shall be submitted to the Program Manager by email at WLine-InfoRequest.WHCRWA@decorp.com. **The Request shall include all items required for review by the Authority or its authorized representative, including without limitation the Request Documents (defined below) as well as all payments to the Authority for review of the Request as required by Article IV.**
- b. A Request shall include all of the following documents (each a "Request Document", and collectively the "Request Documents"):
 - (i) all applicable Encroachment Application Forms; and
 - (ii) all other materials, documents, and information listed as required in the Encroachment Policy Guidelines.
- c. If an Encroachment is contemplated, the Request shall be submitted in accordance with this Encroachment Policy before any work activity by or on behalf of the Requestor occurs on the Authority's Property Interests, and no work activity may occur on the Authority's Property Interests unless and until the Request is approved by the Authority in writing in accordance with this Encroachment Policy and only in a manner approved by the Authority.
- d. If an Encroachment already exists but has not been approved by the Authority in writing (which is a violation of this Encroachment Policy), the Request shall be submitted as soon as possible; provided, however, if a Person is notified by the Program Manager of an existing Encroachment, the Request shall be submitted no later than 15 days after the date of the

Program Manager's notice. Failure to timely submit a Request will result in the delay of the Program Manager's review of the Request and may result in the denial of the Request in the Authority's sole discretion.

- e. If the Requestor seeks an expedited review of a Request, the Requestor shall include payment of the Expedited Review Fee when submitting the Request in addition to the Requestor's payment of all other amounts required by Article IV.
- f. If an Encroachment already exists that has not been approved by the Authority in writing, the Requestor shall include payment of the Existing Encroachment Review Fee when submitting the Request in addition to the Requestor's payment of all other amounts required by Article IV.

Section 3.04. Initial Review of Encroachment Review Request.

- a. The Program Manager will initially review each Request to determine whether the Request is complete. If a Request is not complete (including without limitation if the Request does not include payment of all amounts required by Article IV), the Program Manager will notify the Requestor in writing of the incomplete portions of the Request using best efforts to provide such notice within 30 days after the Program Manager's receipt of the initial Request (or within 15 days after the Program Manager's receipt of the initial Request if the Requestor has paid the Expedited Review Fee to the Authority) and will discontinue review of the Request until the Requestor has provided all information and/or payments required to make the Request complete as determined by the Program Manager.
- b. When a complete Request is received by the Program Manager, the Program Manager will review the complete Request and will provide feedback to the Requestor ("Authority Comments") by markup of the applicable Request Document(s) and/or written comments. Additional information about the estimated timelines for the Authority's review of a Request will be set out in the Encroachment Policy Guidelines.
- c. The Requestor shall revise the applicable Request Document(s) as necessary and resubmit same to the Program Manager until all requirements of the Authority are satisfied and all Authority Comments have been resolved to the satisfaction of the Authority. After all required revisions to the Request Document(s) have been submitted to the Program Manager, the Program Manager will review the complete Request (including the revised Request Document(s)) and will make a recommendation on whether the Authority should consider approval or denial of the Request.
- d. If the Program Manager determines in its sole discretion that the Standard Review Fee does not cover the Authority's costs associated with the initial review of the Request because of the number of resubmissions caused by

the Requestor or the amount of time required to review the Request due to the nature of the Request, the Program Manager shall notify the Requestor that an Additional Review Fee is required, which the Requestor shall pay within 10 days after the date of the Program Manager's notice that such fee is required.

- e. If the Program Manager determines that a Request should be divided into multiple Requests due to the nature of the Encroachments involved, the Requestor shall then submit multiple Requests and pay the appropriate fees, charges, and other amounts for each Request.
- f. A Requestor's failure to provide a complete Request, to make the required revisions to a Request Document, to timely pay the Additional Review Fee when required, or to separate a Request into multiple Requests when required will result in the delay of the Program Manager's review of the Request and may result in the denial of the Request in the Authority's sole discretion.

Section 3.05. Request Review Determination; Approval Document.

- a. After the Program Manager has completed the initial review of a Request, the Program Manager will present to the Encroachment Review Committee the Request along with the Program Manager's recommendation regarding the Request. The Encroachment Review Committee shall review the information provided by the Program Manager and make one of the following determinations regarding the Request: (1) the Encroachment Review Committee recommends drafting of the appropriate Approval Document in accordance with the Authority's requirements and this Encroachment Policy; (2) the Encroachment Review Committee recommends denial of the Request; (3) the Encroachment Review Committee determines that additional information is required from the Requestor and directs the Program Manager to notify and request the additional information from the Requestor; or (4) the Encroachment Review Committee recommends the Request be referred to the Board for further consideration.
- b. If drafting of the appropriate Approval Document for a Request is recommended by the Encroachment Review Committee or the Board (or its authorized representative), the Program Manager shall review the Request and the Authority's affected Property Interests and shall determine in coordination with the Attorneys the appropriate approval document(s) for the Request (each an "Approval Document"), which can include without limitation a letter of no objection, a consent to encroachment, a Relocation Agreement, or an easement. The Approval Document(s) will be drafted by the Program Manager and/or the Attorneys and shall be in a form acceptable to the Authority. The Program Manager shall provide the

drafted Approval Document(s) for the Request to the Requestor for review and approval by the Requestor. The Requestor agrees to coordinate with the Authority to provide all information and/or documents requested to finalize preparation of the Approval Document(s).

- c. After all Approval Documents for a Request are finalized, the Program Manager shall present to the Board (or its authorized representative) the following: (i) the Request; (ii) the Program Manager's recommendation; (iii) the Encroachment Review Committee's determination; and (iv) the Approval Document(s). The Board (or its authorized representative) shall review the information provided by the Program Manager and make one of the following determinations regarding the Request: (1) approve the Request and execution of the appropriate Approval Document(s); (2) deny the Request; or (3) direct the Program Manager to notify and request additional information from the Requestor.
- d. The Authority's determination regarding a Request under this Encroachment Policy shall be final when: (1) the Board (or its authorized representative) approves the Request and the applicable Approval Document(s); (2) the Requestor withdraws the Request; or (3) the Board (or its authorized representative) denies the Request.

Section 3.06. Approval Document Required Onsite. All contractors and subcontractors of a Requestor performing any activities within the Authority's Property Interests shall have all applicable, fully-executed Approval Document(s) in their possession at all times while on the Authority's Property Interest, and shall produce such Approval Document(s) upon request of the Program Manager or its representatives. The Program Manager may notify any contractor or subcontractor who does not produce a fully executed Approval Document for the applicable Property Interest to stop work until the applicable Approval Document is produced. Further, the Requestor and all contractors and subcontractors of the Requestor must be in compliance with the requirements of the Approval Document(s) for performing any activities within the Authority's Property Interests, including without limitation any insurance requirements. The Program Manager may notify any contractor or subcontractor to stop work if there is a failure to comply with the applicable Approval Document. When the Program Manager issues a notice pursuant to this Section, all work specified in the notice shall immediately cease.

Section 3.07. Relocation Agreement. If the Requestor in the Request seeks the relocation of the Authority's Facilities to avoid and/or minimize a contemplated or existing Encroachment and the Authority is willing to consider approval of such Request, the terms and conditions required for such relocation shall be specified in a separate agreement between the Authority and other required parties necessary or advisable for the relocation (a "Relocation Agreement"). A Relocation Agreement shall include additional terms and conditions required by the Authority in order for the Authority to

approve such Relocation Agreement. The Requestor shall comply with all terms and provisions of the Relocation Agreement in order for such Relocation Agreement to be considered an Approval Document for the purposes of this Encroachment Policy and to evidence the Authority's approval of an Encroachment. In addition to other terms, the Relocation Agreement shall require the Requestor (and/or another party named by the Requestor) to be solely responsible for all costs associated with the relocation as more particularly specified in the Relocation Agreement (the "Relocation Costs") and to provide to the Authority a deposit to be used by the Authority to pay for the Relocation Costs. Such Relocation Costs (including the related deposit) are in addition to any amounts due to the Authority for review of the Request pursuant to Article IV of this Encroachment Policy. The Authority is not obligated to approve a Request to relocate the Authority's Facilities and may deny such Request in its sole discretion.

ARTICLE IV
FEES AND CHARGES

Section 4.01. Standard Review Fee. Upon submission of a Request pursuant to Section 3.03, the Requestor shall pay a non-refundable Standard Review Fee. The fee charged by the Authority shall depend on the type of development (as determined in the sole discretion of the Authority) as shown in the chart below. The Standard Review Fee does not include the other fees, charges, or amounts the Authority imposes in accordance with this Encroachment Policy in addition to the Standard Review Fee.

Type of Development	Fee
Master planned development	\$4,500
Single site-commercial	\$2,500
Single site-residential	\$250
Single perpendicular crossing of Utilities, drainage feature, or roadway	\$750
Multi-Family development	\$2,000

Section 4.02. Expedited Review Fee. If the Requestor seeks an expedited review, the Requestor shall also pay a non-refundable fee of \$3,000 upon submission of the Request to the Authority pursuant to Section 3.03. This fee is not included in and is in addition to the Standard Review Fee and any other required fee.

Section 4.03. Existing Encroachment Review Fee. If an Encroachment already exists but was not previously approved by the Authority in writing, the Requestor shall also pay a non-refundable fee of \$3,000 upon submission of the Request to the Authority pursuant to Section 3.03. This fee is not included in and is in addition to the Standard Review Fee and any other required fee.

Section 4.04. Additional Review Fee. The Additional Review Fee is determined on a case-by-case basis based upon the Authority's cost for the review. The Program Manager will notify the Requestor of the amount of the Additional Review Fee when applicable. The Requestor shall timely pay the Additional Review Fee to the Authority when notified by the Program Manager in accordance with this Encroachment Policy, including without limitation Section 3.04(d). This fee is not included in and is in addition to the Standard Review Fee and any other required fee.

Section 4.05. Other Fees, Charges, or Amounts. The Requestor is also responsible for all other fees, charges, or amounts required by this Encroachment Policy, including without limitation such fees, charges, or amounts specified in Sections 3.07, 5.01, 5.03 and 5.04.

Section 4.06. Payment of Amounts Due to the Authority.

- a. All fees, charges, or other amounts payable to the Authority shall be paid in money which is legal tender in the United States of America.
- b. Payments shall be made by check made payable to "West Harris County Regional Water Authority." No cash or other forms of payment will be accepted. If any Requestor's payment is refused or returned by the processing financial institution, the Authority will charge the Requestor a return item fee of \$25.00 per check and will discontinue review of the Request until full payment of all amounts due to the Authority have been received by the Authority. The Requestor's failure to make all required payments in accordance with this Encroachment Policy may result in the denial of the Request in the Authority's sole discretion.

ARTICLE V

VIOLATIONS OF ENCROACHMENT POLICY; CIVIL PENALTIES

Section 5.01. Encroachment Approval Violations. If the Program Manager learns of or identifies an existing Encroachment on any Authority's Property Interest that has not been approved previously by the Authority in writing, the Program Manager shall notify the landowner that a Request to review such Encroachments must be submitted to the Authority in accordance with this Encroachment Policy, through which review the Authority may grant or deny approval of the Encroachment in its sole discretion. If construction of an Encroachment is proceeding without the Authority's written approval of same, the Program Manager will notify the violator: (i) to stop immediately all construction on the Authority's Property Interest; and (ii) the Authority's written approval of the Encroachment is required before any construction proceeds, which approval the Authority may grant or deny in its sole discretion. Failure to obtain the Authority's approval of an Encroachment in accordance with this Encroachment Policy shall be a violation of the Authority's rules. The Authority reserves its rights to pursue any and all remedies to halt construction of such an Encroachment and/or to remove

such Encroachment. In addition to all other remedies available to the Authority, the Authority may require any Person that encroaches onto the Authority's Properties Interests without complying with this Encroachment Policy to be responsible for all costs incurred by the Authority to utilize, protect, or enforce the Authority's Property Interests from such Person's Encroachment, including without limitation all costs that must be paid by the Person to obtain any approval of such Encroachment pursuant to this Encroachment Policy and all costs to remove such Encroachment.

Section 5.02. Payment Violations. Each Person shall be responsible for paying the Authority all fees, penalties, charges, or other amounts due to the Authority on or before the due date. Failure to make any payment when due, regardless of whether the Authority has made demand for payment, shall be a violation of the Authority's rules.

Section 5.03. Civil Penalty. A Person is subject to a civil penalty of up to \$5,000 for each violation or each day of a continuing violation if the Person: (i) violates any provision of this Encroachment Policy, any rules contained in same, or any other order or rule of the Authority, (ii) makes unauthorized use of Authority services, property, or facilities, or (iii) causes damage to Authority property or facilities by using them in a manner or for a purpose contrary to the purpose for which they were designed. The Board may set the penalty based on (all as determined by the Board): (i) the severity of the offense; (ii) whether such violation was willful, knowing, reckless or inadvertent; (iii) the history of conduct by such Person; (iv) the damages sustained by the Authority; and (v) any other factors determined appropriate by the Board. The Authority may bring an action to recover the penalty in the appropriate court in the county where the violation occurred. The penalty shall be paid to the Authority. This penalty shall be in addition to any other penalties provided by the laws of the State of Texas and to any other legal rights and remedies of the Authority permitted by law or in equity.

Section 5.04. Collection Costs. If the Authority is required to incur costs to collect unpaid amounts due to the Authority in accordance with this Encroachment Policy, all such costs, including without limitation court costs, reasonable attorneys' fees, and expenses, shall be paid by the delinquent Person to the Authority, and the Authority shall be entitled to collect such costs in any action for the collection of the unpaid amounts.

Section 5.05. Injunction. The Authority may bring an action for injunctive relief in the appropriate court in the county where a violation of an Authority rule or order occurs or is threatened to occur. The Authority may bring an action to recover amounts due to the Authority, including without limitation any unpaid fees or costs required by this Encroachment Policy, collection costs, penalties, and reasonable attorneys' fees, and injunctive relief in the same proceeding.

ARTICLE VI
MISCELLANEOUS

Section 6.01. Amendment and Waiver. The Authority reserves the right to amend any terms or provisions of this Encroachment Policy, and to waive any of the requirements and rules specified in this Encroachment Policy, with or without notice to any other party. The failure of the Authority to insist, in any one or more instances, upon a Person's performance of any of the terms, requirements or conditions of this Encroachment Policy shall not be construed as a waiver or relinquishment of the future performance of any such term, requirement or condition by that Person or any other Person.

Section 6.02. Severability. The provisions of this Encroachment Policy are severable. If any word, phrase, clause, sentence, section, provision, or part of this Encroachment Policy should be held invalid or unconstitutional by an entity with valid jurisdiction, it shall not affect the validity of the remaining provisions, and it is hereby declared to be the intent of the Authority's Board of Directors that Encroachment Policy would have been adopted as to the remaining portions, regardless of the invalidity of any part.

Section 6.03. Authority Consultants. The Authority's consultants, including without limitation the Program Manager and Attorneys, are directed and authorized to take all actions consistent with this Encroachment Policy.

Section 6.04. Open Meeting. The Board officially finds, determines and declares that this Encroachment Policy was reviewed, carefully considered, and adopted at a regular meeting of the Board, and that a sufficient written notice of the date, hour, place and subject of this meeting was posted at a place readily accessible and convenient to the public within the Authority and on a bulletin board located at a place convenient to the public in the appropriate county for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, and that this meeting had been open to the public as required by law at all times during which this Encroachment Policy was discussed, considered and acted upon. The Board further ratifies, approves and confirms such written notice and the contents and posting thereof.